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Attorneys for Defendants Luxalpha Sicav as represented by its Liquidators Maitre Alain Rukavina and Paul Laplume, Maitre Alain Rukavina and Paul Laplume, in their capacities as liquidators and representatives of Luxalpha Sicav

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

-v-

BERNARD L. MADOFF INVESTMENT
SECURITIES, LLC.

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

-v-

UBS AG, et al.

Defendants.

Adv. Pro. No. 10-04285 (SMB)

**DECLARATION OF BRETT S. MOORE IN OPPOSITION TO
TRUSTEE'S MOTION FOR LEAVE TO FILE A SECOND
AMENDED COMPLAINT AND IN SUPPORT OF LUXALPHA'S
CROSS MOTION FOR CLAIM DETERMINATION AND
ALLOWANCE**

I, Brett S. Moore, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a principal of the law firm of Porzio Bromberg & Newman P.C. ("Porzio"), counsel to Defendants Luxalpha Sicav ("Luxalpha") as represented by its Liquidators Maitre Alain Rukavina and Mr. Paul Laplume, and Maitre Alain Rukavina and Mr. Paul Laplume, in their capacities as liquidators and representatives of Luxalpha Sicav (collectively, the "Liquidators" and together with Luxalpha, the "Defendants"). Porzio maintains offices for the practice of law at, among other places, 156 West 56th Street, Suite 803, New York, New York 10019. I have been duly admitted to practice in the State of New York and the United States District Court for the Southern District of New York.

2. I submit this declaration in support of the Memorandum of Law in opposition (the "Opposition") to the motion (ECF No. 247)¹ filed by Irving H. Picard as Trustee (the "Trustee") for the Liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS") for leave to file a second amended complaint (the "PSAC") (ECF No. 248, Ex. A) (the "Motion") and in support of Luxalpha's cross-motion for claim determination and allowance (the "Cross-Motion").

3. Attached hereto as **Exhibit A** is a true complete copy of the Picard v. UBS AG, et al., [Case No. 1:11-cv-4212, ECF No. 23] Proposed Amended Complaint.

4. Attached hereto as **Exhibit B** are true copies of the relevant pages of Luxalpha's Memorandum of Law in support of Motion to Dismiss the Amended Complaint filed on April 27, 2012. [ECF No. 102].

5. Attached hereto as **Exhibit C** are true excerpts of the April 28, 2016 Transcript.

¹ All references to docket entries herein, unless otherwise indicated, are to *Picard v. UBS AG, et al.*, Adv. Pro. No. 10-04285 (SMB).

6. Attached hereto as **Exhibit D** is a true copy of the communication report dated October 24, 2006, partially quoted by the Trustee in the PSAC ¶ 182.

7. Attached hereto as **Exhibit E** is a true copy of the "Manager Analysis" prepared by UBS Asset Management dated January 26, 2002, partially quoted by the Trustee in the PSAC ¶¶ 101-02.

8. Attached hereto as **Exhibit F**² is a true copy of email exchanges on March 5, 2004 and March 8, 2004, partially quoted by the Trustee in the PSAC ¶¶ 104-05, 162, 195.

9. Attached hereto as **Exhibit G** is a true copy of email exchanges on March 31, 2003, April 1, 2003, December 17, 2003 and December 24, 2003, partially quoted by the Trustee in the PSAC ¶¶ 90, 92.

10. Attached hereto as **Exhibit H** is a true copy of the OMPEM dated October 16, 2008, relied upon by the Trustee in PSAC ¶ 222 and referenced in OC ¶ 221.

11. Attached hereto as **Exhibit I** is a true copy of email exchanges on March 31, 2003, January 5, 2004 and January 6, 2004, partially quoted by the Trustee in the PSAC ¶ 91.

12. Attached hereto as **Exhibit J** is a true copy of the Memorandum Decision Denying Trustee's Motion for Leave to File a Second Amended Complaint in *Picard v. ABN AMRO Bank N.V.*, Adv. Pro. No. 10-05354(SMB) (Bankr. S.D.N.Y.) [ECF No. 200.]

13. Attached hereto as **Exhibit K** is a true copy of the email dated April 20, 2006, partially quoted by the Trustee in the PSAC ¶¶ 157, 178, 187.

14. Attached hereto as **Exhibit L** is a true copy of correspondence from Brett S. Moore to the Madoff Victim Fund dated September 20, 2018.

² Although certain Exhibits included herein were originally designated as "Confidential," I have confirmed with counsel for the UBS entities, Marshall King, Esq., that the confidential designations have been withdrawn.

15. Attached hereto as **Exhibit M** is a true copy of correspondence from the Madoff Victim Fund to Brett S. Moore dated October 23, 2018.

I hereby declare under penalty of perjury that the foregoing statements are true and correct.

Executed on the 3rd day of April, 2020, at New York, New York

/s/ *Brett S. Moore*
Brett S. Moore